No. 47

In the Supreme Court of the United States

OCTOBER TERM, 1951

UNITED STATES OF AMERICA, PETITIONER

v.

SAMUEL M. SHANNON, PATTY A. SHANNON AND W. L. SHANNON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The district court did not write an opinion. Its findings of fact and conclusions of law appear in the record at pages 26-27. The majority and dissenting opinions of the court of appeals (R. 39-50) are reported at 186 F. 2d 430.[1]

[1] The opinion of the court of appeals covers two cases, one of which was instituted under the Tucker Act and the other under the Federal Tort Claims Act. These cases were numbered 6128 and 6129, respectively, in the court of appeals. The Government believes that the judgments of the court below are erroneous in both cases. However, in order to simplify the issue, a writ of certiorari was sought to review only the judgment entered in the Tort Claims Act case, *i.e.*, No. 6129.

JURISDICTION

The judgment of the court of appeals was entered on January 3, 1951 (R. 54). By order of the Chief Justice dated March 21, 1951, the time for filing a petition for a writ of certiorari in this cause was extended to May 7, 1951 (R. 56). The petition for a writ of certiorari was filed on May 3, 1951, and was granted on October 8, 1951. The jurisdiction of this Court rests on 28 U.S.C. 1254.

QUESTION PRESENTED

Whether voluntary assignees of claims against the United States for property damage may recover in a suit against the United States, despite non-compliance with the Anti-Assignment Act, 31 U.S.C. 203, by the expedient of joining their assignors as parties defendant or unwilling plaintiffs.[2]

STATUTE INVOLVED

Section 3477 of the Revised Statutes, as amended, 31 U.S.C. sec. 203, provides as follows:

> All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed

[2] A similar question is presented in *United States of America v. Jordan*, No. 46, this Term.

in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof.

* * *

STATEMENT

The facts in this case may be summarized as follows: In 1943, the United States leased a tract of land from Kathleen P. Boshamer and others as joint owners. Two one-acre plots of land, each containing a frame tenant house, were excepted from the leased tract (R. 27). In April 1946, Kathleen Boshamer and the other joint owners (hereafter referred to as "the Boshamers") entered into a contract with respondents whereby respondents agreed to purchase the tract of land which was the subject of the lease, including the two acres which had never been included in the lease. The sale contract purported to assign to respondents any claims which the vendors had against the United States for any damages caused to the property during the term of the lease. (R. 33.) Thereafter, the Boshamers conveyed the entire property to respondents (R. 10, 27). The leased property was returned by the United States on April 22, 1947 (R. 4, 7).

Respondents, as sole plaintiffs, instituted this action against the United States in the United States District Court for the Eastern District of South Carolina under the Federal Tort Claims Act (now 28 U.S.C. 1346(b)). Recovery was sought

for the damages caused by alleged tortious acts of agents of the United States in destroying the two frame tenant houses located on the two one-acre plots excepted from the lease (R. 19-22). In addition to the United States, the Boshamers were named as defendants (R. 19). The complaint alleged that the Boshamer defendants must prosecute any cause of action they have against the United States in their own name (paragraph 4, R. 19). It was then alleged (paragraph 6, R. 20) that these defendants have a cause of action against the United States, that they are equitably liable to the plaintiffs for the amount of any judgment they may recover, and that they are unwilling parties plaintiff refusing to aid the plaintiffs in recovering damages to which plaintiffs are entitled.

The Boshamers filed an answer (R. 22-24) stating (paragraph 3) that they had sold any cause or causes of action but "that they are without knowledge or information as to any damages done to the said property and they have been unwilling to institute or prosecute a damage suit against the United States of America for something they have no knowledge of, and that the defendants are entirely willing for the plaintiffs to recover any damages to which they may be lawfully entitled." This answer further stated (paragraph 12) that these defendants "do deny that they are personally liable or responsible to the plaintiffs or any one else for any act of damage alleged to have

been committed, except that they admit the plaintiffs are entitled to the proceeds of any claim for damages which may be established as owed by the United States of America."

The district court found that during January and February, 1945—prior to the assignment by the Boshamers to the respondents, in April 1946—soldiers of the United States Army damaged the tenant houses and the barn in the total amount of $975.00 (R. 27). Early in the proceedings, in denying the Government's motion to dismiss raising, among other things, the Anti-Assignment Act, R.S. 3477, 31 U.S.C. 203, the court had reasoned that all parties were before the court, that judgment would be awarded in favor of the Boshamers and any proceeds arising therefrom would be awarded the respondents (the Shannons) (R. 1-2). However, its conclusions of law stated that "the assignments made in this action are of full force and effect" and that the Shannons were entitled to judgment. Judgment was accordingly entered in favor of the Shannons against the United States. (R. 27-28.)

The Court of Appeals for the Fourth Circuit affirmed, holding that there is no ground for applying the Anti-Assignment Statute to deny recovery in a case such as this (R. 39-45). Judge Soper dissented (R. 45-50).

SPECIFICATION OF ERRORS TO BE URGED

The court of appeals erred:

1. In holding that while "the assignment involved falls within the terms of the anti-assignment statute" (R. 42), recovery could nevertheless be had on the claim against the United States by the assignees.

2. In affirming the judgment of the district court.

SUMMARY OF ARGUMENT

I

The purported assignment of the claim for damages for tort, made more than a year after the damage had occurred, clearly did not conform to the limitations of Anti-Assignment Act, and under the plain language of that Act was null and void. This Court has consistently held such an assignment to be invalid and has recognized the invalidity of voluntary assignments in cases holding that transfers by operation of law were not within the statutory prohibition. The assignment here was purely voluntary and cannot be said to be a transfer by operation of law. It follows that the judgment, which can only be supported by reference to the assignment, is erroneous.

II

The statute does not, as the court below thought, permit the validation of assignments by the simple expedient of joining the assignor as a party to the suit. Rather, it declares the attempted assignment

to be "absolutely null and void." Decisions of both this Court and the lower federal courts recognize that the statute is one of substance rendering assignments invalid, and is not merely a procedural limitation on the mode of their enforcement.

Moreover, the authorities are clear that the effect of the Act is the same whether the claim be asserted before an administrative agency or the courts. The decision below violates this established principle and produces the anomalous result of judicial enforcement of an assignment which the fiscal and accounting officers of the government must refuse to honor.

Finally, the statute has many purposes other than simple avoidance of the risk of double recovery. These purposes, among which is to make it unnecessary for the government to investigate alleged assignments, would be frustrated under the view adopted below.

III

There is no grant of authority to the courts to make the assignment effective on equitable principles. This follows from the rule, already noted, that application of the statute is the same wherever the claim may be asserted, *i.e.*, administratively or judicially. Moreover, the decided cases recognize that the statute embraces legal and equitable assignments alike. Cases applying equitable principles to the distribution of funds after the government's interest has ceased do not justify

the use of such principles to make invalid assignments effective against the United States. Finally, there are, in the instant case, no facts justifying the granting of such equitable relief.

ARGUMENT[3]

I

The Assignment of the Claim to Respondents Was Prohibited by the Anti-Assignment Statute

The damage for which recovery was allowed in this suit under the Federal Tort Claims Act occurred in January and February, 1945. The contract of sale of the property in which the Boshamers purported to assign any claim against the United States was executed more than a year later, in April, 1946 (R. 27, 32-33). At that time, the Boshamers had simply a claim against the United States for tort damages for injury to the buildings. No claim had then been allowed, the amount due had not been ascertained, and no warrant had issued. Indeed, the Boshamers have never asserted such a claim. Under the express language of the Anti-Assignment Act, R.S. 3477, 31 U.S.C. sec. 203, *supra*, pp. 2-3, the assignment was "absolutely null and void." This Court has consistently held that such a voluntary assignment is of no effect as against the United States and cannot be the basis

[3] For convenience, our argument is set forth fully in this brief, without reference to, or incorporation of, the argument in *United States* v. *Jordan*, No. 46, which is similar, and, in part, identical.

of a judgment against the United States. *United States* v. *Gillis*, 95 U.S. 407; *McKnight* v. *United States*, 98 U.S. 179; *St. Paul Railroad* v. *United States*, 112 U.S. 733; *Flint and Pere Marquette Railroad Co.* v. *United States*, 112 U.S. 762; *Hager* v. *Swayne*, 149 U.S. 242; *National Bank of Commerce* v. *Downie*, 218 U.S. 345. Decisions which have established the principle that transfers by operation of law are not within the prohibition of the statute recognize that purely voluntary assignments are invalid. *United States* v. *Aetna Surety Co.*, 338 U.S. 366, 370; *Western Pacific Railroad Co.* v. *United States*, 268 U.S. 271, 275; *Price* v. *Forrest*, 173 U.S. 410, 422; see also *Martin* v. *National Surety Co.*, 300 U.S. 588, 594; *Nutt* v. *Knut*, 200 U.S. 12, 19-20; *Ball* v. *Halsell*, 161 U.S. 72, 78; *Freedmen's Saving Co.* v. *Shepherd*, 127 U.S. 494, 505-506; *Bailey* v. *United States*, 109 U.S. 432, 436-437; *Spofford* v. *Kirk*, 97 U.S. 484, 488-489.[4] There is no basis in the instant case for application of the exception relating to transfers by operation of law. The majority opinion below recognizes (R. 42) that "the assignment involved falls within the terms of the anti-assignment statute." As this Court said, with reference to voluntary assign-

[4] The only exceptions noted by this Court with respect to voluntary assignments of claims made to take effect before allowance are general assignments for the benefit of creditors (*Goodman* v. *Niblack*, 102 U.S. 556) and transfers by will (*Erwin* v. *United States*, 97 U.S. 392).

ments, in *National Bank of Commerce v. Downie*, 218 U. S. 345, 356:

> They are clean-out cases of a voluntary transfer of claims against the United States, before their allowance, in direct opposition to the statute. If any regard whatever is to be had to the intention of Congress, as manifested by its words—too clear, we think, to need construction—we must hold such a transfer to be absolutely null and void, and as not, in itself, passing to the appellants any interest, present or remote, legal or equitable, in the claims transferred.

In the instant cases, judgment for the assignees can be supported only by giving effect to the assignment, as the trial court recognized in its conclusions of law (R. 27). The judgment is thus in direct opposition to the plain language of the statute. In the discussion to follow, we shall show that the reasoning by which the majority below sought to escape the effect of this plain language cannot be sustained.

II

The Anti-Assignment Statute Does Not Represent a Mere Procedural Limitation Which Is Satisfied When All Parties Are Before the Court

The majority of the court below took the view that since both the assignors and assignees were before the court and bound by the judgment, and since the assignors, who had refused to prosecute the claim, had filed disclaimers, the judgment is

not contrary to the statute. Thus, the Court of Appeals' position is that the Anti-Assignment statute is simply a procedural limitation upon the method of collecting assigned claims. This must have been the court's view because the only material difference between the present case and the landmark decision in *United States* v. *Gillis*, 95 U.S. 407, which the majority below said "is manifestly not controlling here" (R. 44), is the fact that here the assignors have been joined as parties.

But the statute does not declare that the assignment is merely voidable and may be validated by the presence of both assignor and assignee before the tribunal. On the contrary, it declares the attempted assignment to be "absolutely null and void." This Court, in *United States* v. *Aetna Surety Co.*, 338 U.S. 366, 372, fn. 8, made it clear that the statute is one of substance which wholly invalidates assignments falling within its prohibitory purview. Earlier, in *Spofford* v. *Kirk*, 97 U.S. 484, 490, it was stated:

> We cannot say, when the statute declares all transfers and assignments of the whole of a claim, or any part or interest therein, and all orders, powers of attorney, or other authority for receiving payment of the claim, or any part thereof, shall be absolutely null and void, that they are only partially null and void, that they are valid and effective as between the parties thereto, and only invalid when set up against the government.

And the lower federal courts have treated the statute as one of substance invalidating voluntary assignments and not merely as a procedural limitation that may be overcome by joining the assignor as an unwilling plaintiff. See, e.g., *23 Tracts of Land, Etc.* v. *United States,* 177 F. 2d 967, 970 (C.A. 6); *Greenville Sav. Bank* v. *Lawrence,* 76 Fed. 545, 546 (C.A. 4); *H. M. O. Lumber Co., et al.* v. *United States,* 40 F. 2d 544 (W.D. Mich.). See also *Coates* v. *United States,* 53 Fed. 989 (C.A. 4); *Smith* v. *United States,* 96 C. Cls. 326, 342; *Bolivar Cotton Oil Co.* v. *United States,* 95 C. Cls. 182, 186-187; *Hitchcock* v. *United States,* 27 C. Cls. 185; affirmed *sub nom. Prairie State Bank* v. *United States,* 164 U.S. 227.

There is another particular in which the view that recovery can be allowed on assigned claims whenever the assignor is joined as a party to the suit is contrary to precedent, as well as to the theory of the statute. In *United States* v. *Gillis,* 95 U.S. 407, the Court rejected the argument that the Act applied only to claims asserted before the Treasury Department (in which the fiscal and accounting offices were then located) and not to suits in the Court of Claims, stating (p. 413 and p. 416): "The words embrace every claim against the United States, however arising, of whatever nature it may be, and wherever and whenever presented," and the act "is of universal application, and covers all claims against the United States in every tribunal in which they may be asserted." See also

Ball v. *Halsell*, 161 U.S. 72, 78; *National Bank of Commerce* v. *Downie*, 218 U.S. 345, 352. The decision below, resting as it does on procedural rules applicable to the courts, would create a difference in the effect of the statute, depending upon the governmental authority before which the claim was asserted. The result of the holding is that while the fiscal and accounting officers would be required to refuse to honor an assignment when the claim is presented to them, the assignment becomes valid as soon as suit is brought, and the assignor is joined as a party and waives his right to the claim. Far from intending any such anomalous result, with its attendant administrative difficulties, Congress intended the statute to have uniform application. The contrary argument is, we submit, substantially the contention rejected long ago in the *Gillis* case. See 95 U.S., at 414-416.

The view that the purposes of the statute are not violated if the assignor is joined as a party likewise ignores settled principles. Avoidance of possible double recovery is not the only purpose of the statute (cf. R. 41). Indeed, the primary purpose was to prevent persons of influence from buying up claims against the United States, which might then be improperly urged upon officers of the Government. *United States* v. *Aetna Surety Co.*, 338 U.S. 366, 373. Other purposes are "to make unnecessary the investigation of alleged assignments, and to enable the Government to deal only with the original claimant" (*United States* v. *Aetna Surety*

Co., 338 U.S. 366, 373); "that the government might not be harassed by multiplying the number of persons with whom it had to deal, and might always know with whom it was dealing until the contract was completed and a settlement made" (*Hobbs* v. *McLean*, 117 U.S. 567, 576; cf. *Goodman* v. *Niblack*, 102 U.S. 556, 560); "to protect the Government from traffic in claims against it" (*Sherwood* v. *United States*, 112 F. 587, 592 (C.A. 2), reversed on other grounds, 312 U.S. 584).

In the instant case, the Boshamers never asserted any claim against the United States and in their answer stated they were without knowledge or information as to any damages done the property (R. 23). And respondent Samuel M. Shannon testified on cross-examination that he understood he was "buying a claim against the Government" (R. 13). Clearly, there has been traffic in a claim against the Government and, in fact, it is evident that the assignors would never have asserted the claim. The other purposes stated above are likewise defeated since an investigation of the alleged assignment has been made necessary, the Government has not been able to deal with only the original claimant, and the number of persons with whom it must deal has been multiplied.[5] As Judge Soper pertinently said in his dissent (R. 48):

> The unescapable and controlling fact is that the suits are based on assignments and if it is

[5] In the case of partial assignments, such problems obviously become more complicated.

adjudged that they are tenable, the United States will be required to inquire into the relationship and transactions between the parties, and the very purpose of the Act will be defeated.

III

The Prohibition of the Anti-Assignment Statute May Not Be Avoided on Equitable Principles

The majority opinion below asserted (R. 45) that "No precedent is created which might lead to the evils that the statute was designed to prevent, for the relief is granted in the exercise of the equitable powers of the court which may not be availed of except in circumstances of hardship such as are here presented." But, as we have already noted (*supra*, pp. 12-13), the application of the Act is the same whether the claim is asserted to administrative officers or to a court having equity powers. The statute does not empower the courts to give relief from its requirements. See *United States* v. *Gillis*, 95 U.S. 407, 413-414; *Spofford* v. *Kirk*, 97 U.S. 484, 488-489; *National Bank of Commerce* v. *Downie*, 218 U.S. 345, 353-354; *Hitchcock* v. *United States*, 27 C. Cls. 185, 206-208, affirmed *sub nom. Prairie State Bank* v. *United States*, 164 U.S. 227. For example, with reference to the Anti-Assignment Act, this Court stated in the *Gillis* case (95 U.S. at pp. 413-414) "* * * the statute strikes down and denies any effect to powers of attorney, orders, transfers, and assignments *which before*

were good in equity, and which a debtor was bound to regard when brought to his notice" (emphasis added). And, the Court used the following language in *Spofford* v. *Kirk, supra,* and repeated it by quoting from that case in *National Bank of Commerce* v. *Downie, supra* (97 U.S. at pp. 488-489, 218 U.S. at p. 353):

> It would seem to be impossible to use language more comprehensive than this. *It embraces alike legal and equitable assignments.* It includes powers of attorney, orders, and other authorities for receiving payment of any such claim, or any part or share thereof. It strikes at every derivative interest, in whatever form acquired, and incapacitates every claimant upon the government from creating an interest in the claim in any other than himself. (Emphasis added.)

As was aptly stated in *Mattox* v. *Hightshue,* 39 Ind. 95, 105, and applied to the Anti-Assignment Act in *Hitchcock* v. *United States,* 27 C. Cls. 185, 206, affirmed *sub nom. Prairie State Bank* v. *United States,* 164 U. S. 227: "An equity cannot grow out of an illegal and void transaction."

It is said that the equitable relief here granted on the ground of mistake is primarily between the private parties (R. 44). It is true that it has been held that, since the Anti-Assignment statute is for the protection of the Government, it will not be applied so as to produce inequitable results between assignor and assignee. *McKenzie* v. *Irving Trust*

Co., 323 U.S. 365; *Martin* v. *National Surety Co.*, 300 U. S. 588; *Lay* v. *Lay*, 248 U.S. 24; *McGowan* v. *Parish*, 237 U.S. 285. But those decisions presented situations where the Government was not concerned with the result, such as cases where the claim had already been paid or allowed. In those cases, equitable principles were invoked in determining which person should receive money which the Government had paid. But here the equitable "relief," because of "mistake", consists of permitting a suit against the United States by the assignee of an unliquidated claim. This so-called "equitable relief" swallows up the whole of the Anti-Assignment Act, to the clear detriment of the Government.

Moreover, "Any ordinarily prudent person in purchasing property takes into consideration its condition at the time of the purchase. It is reasonable to assume that plaintiff did so." *Smith* v. *United States*, 96 C. Cls. 326, 342. In the instant case, it affirmatively appears that respondents took into consideration the condition of the property at the time of the purchase. On cross-examination, in response to the question "At the time you acquired the place, you knew all of these damages had been done," Mr. Shannon answered "Sure" (R. 12); as the dissenting judge observed (R. 49), "It is obvious that the Shannons got a bargain even if the assigned claims prove to be valueless." And while the Boshamers were agreeable to recovery by the Shannons from the United States, they denied

"that they are personally liable or responsible to plaintiffs or anyone else for any act of damage" (R. 24). As the dissenting opinion points out in detail (R. 49-50), the officers of the United States had no part whatever in the transaction by which the claims against the United States were assigned, and were in no way to blame for any mistaken notion of the law which the parties may have entertained at that time. Thus, even if the statute did not preclude the granting of equitable relief, there is, in fact, no basis therefor here. The conclusion is, we submit, inescapable that contrary to the terms and purposes of the Act, respondents have been permitted to buy and recover upon a claim against the United States which their vendors were unwilling to urge.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below is erroneous and should be reversed.

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